



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 673587 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy dated July 4, 2017 given alleging the tenant has failed to pay \$1063.63 in rent and \$46.25 in utilities.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The Notice in question was issued by a numbered company, stated to be the landlord. The tenant brought his application only against Mr. J.L., claiming him as the landlord. Mr. J.L. confirms he is the president of the company. The numbered company has been added as a respondent in this application.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant failed to pay the stated amount in rent and utilities?

Background and Evidence

The tenant purchased the manufactured home on site in 2011 as a place for his ex-wife to reside in. He has not resided in the home.

Earlier in the year the tenant's ex-wife moved to a care home and the tenant made arrangements for another person "J" to occupy the home. Mr. J.L. testifies that he has had significant trouble with J. However, this eviction Notice has not been issued for "cause" but for non payment of rent and utilities. The conduct of occupants is therefore not relevant to the issue in question.

Up until his ex-wife moved away, rent had been paid to the landlord directly from the welfare office. That arrangement stopped and the tenant paid direct.

There is little dispute but that the tenant is behind in his rent. The landlord presented evidence that the current amount, plus late fees and plus administrative penalties, is about \$1358.96 after the tenant paid \$1200.00 in three installments over the month of July.

He testifies that the rent claimed in the Notice is composed of outstanding rent to July plus three months of \$25.00 per month late fees provided for in the tenancy agreement.

He states that the utilities of \$46.25 are based on his calculation, on a per diem rate of past water and sewer bills issued by the local government. He did not receive an actual bill from the local government until yesterday.

Analysis

The ending of a tenancy is a very serious matter. A landlord will be required to strictly comply with the law. A tenant receiving such a Notice has five days to pay the amount demanded in it or to apply to cancel the Notice. If he fails to do either his tenancy will automatically end ten days after the Notice has been served. It is vital that the amount demanded in the Notice be correct or at least that it be less than the amount truly owed.

Section 39 of the *Manufactured Home Park Tenancy Act* (the "Act") provides:

Landlord's notice: non-payment of rent

39 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 45 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the manufactured home site to which the notice relates by that date.

(6) If
(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Rent is defined as

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a manufactured home site, for the use of common areas and for services or facilities, but does not include a fee prescribed under section 89 (2) (k) [*regulations in relation to fees*];

The landlord acknowledges that the amount demanded as rent in the ten day Notice includes \$75.00 of late fees. Late fees are not rent. They are normally considered to be a pre-estimate and agreed amount of damages resulting from late payment. A landlord may collect late fees but the *Act* does not allow him to end a tenancy with a ten day Notice for non-payment of those fees.

For this reason; that the amount claimed as rent in the Notice includes charges that are not rent, the Notice demands cannot stand and must be set aside.

Additionally, the *Act* does not permit a landlord to give a ten day Notice for non-payment of utilities. It requires the landlord to issue to a tenant a written demand for payment of the utilities and, if payment is not received within 30 days, to treat the amount owing as unpaid rent.

In this case the landlord has only just received the utilities bill, has not issued a written demand, nor waited 30 days, nor claimed the amount as rent. As a result the Notice must be set aside for these reasons as well.

Conclusion

For these reasons the Notice to End Tenancy dated July 4, 2017 must be set aside. The tenant's application is allowed. There is no claim for recovery of any filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: September 19, 2017

Residential Tenancy Branch